

Response to Objections and Rejections

Claim Objections

Claim 1 was objected to because of a grammatical error where the term “positional” was used instead of the term “positionable.” Claim 1 has been amended to delete the term “positional” and to insert in its stead the term “positionable.” Applicant believes this is fully responsive to the objection of the Examiner.

Claim Rejections 35 U.S.C. 102 and 35 U.S.C. 103

General Remarks

The Examiner raised as prior art the Vinci U.S. Patent #5,549,121 and Tari U.S. Patent #4,662,366. Both the Vinci and Tari patents are designed to position a patient’s arm during a particular procedure, primarily angioplasty. During that procedure, the primary need is to have the arms out of the way of the radiographic x-ray equipment, which rotates around and takes sequential x-ray pictures during the procedure. It is the catheter which is doing the work inside an artery. Usually the patient is not anesthetized. There is no need and, in fact, there would be no place for surgeons, operating room nurses, or other people to be positioned around a patient during an angioplasty proceeding. For that reason, both the Vinci and Tari references simply position a patient’s arm, but do nothing to provide protection to a patient’s arm from pressure from operating room personnel. While the Vinci and Tari patents do hold a patient’s arm in position in a particular place, that is all that they do, unlike the current application. Here, the current invention is described as a “pad” (Summary of Invention, page 4) and also described as an “arm protector pad” (Application, page 7, line 6). At the bottom of page 8 of the Application, the arm protector pad is described as made of a soft, yielding, foam-like material to provide a cushioning effect for the patient’s arm (Application, page 8, lines 23-24). On page 9 of the Application, it describes that the arm protector pad will shield the patient’s arm from pressure that may come from the physician or operating room personnel positioned around the operating room table. On page 11, the Application goes on to describe how the arm protector pad can cushion against outside pressure exerted by belts used to secure a patient in place in an ambulance, which, without the arm protector pad and its cushioning effect, could cause the beginning of a decubitus ulcer (Application, page 11, lines 12-

23). Moreover, it specifically describes a purpose is to provide cushioning and protection on a patient's arms against pressure caused by straps or other devices. Again, on page 12 of the Application, it is described that the use of the arm protector pad provides an insulating and protecting foam barrier between pressure from the operating room personnel and the patient's arm (Application, page 12, lines 13-16). Thus, this invention finds its use for patients who are anesthetized or otherwise unable to take protective action for his or her self. The soft cushioning foam structure of this invention and its protective function is neither shown nor suggested by the prior art.

Claim Rejections 35 U.S.C. 102

Claims 7-11 were rejected under 35 U.S.C. 102 as being anticipated by Vinci U.S. Patent #5,549,121. The Examiner reasoned that Vinci shows "at least one central pad, said central pad sized to be positioned under the torso of a patient (Column 4, lines 39-43)." Applicant respectfully traverses this conclusion of the Examiner. Vinci shows a flexible fabric strip. It is described as an "elongated rectangular strip of flexible fabric" (Vinci, Column 4, lines 21-22). The purpose of this flexible fabric strip is described as "... the patient's arm is supported in a position closely adjacent to the table (4) and below the plane of the patient's heart to facilitate radiographic imaging of the coronary system or other portions of the patient's chest cavity as well. The position of the patient's arm also facilitates positioning and movement of the imaging equipment, particularly a C-Arm, which is commonly adopted for rotation relatively close to the table (4)" (Vinci, Column 5, lines 12-18). The Application goes on to explain that the "fabric strip forming the arm support of the person could be formed from any suitable fabric made from natural or synthetic fibers" (Vinci, Column 5, lines 21-22) and suggests that cotton muslin is one preferred fabric. Consequently, Vinci discloses not a "soft pad" as is required in the current invention, but rather a fabric strip. The Vinci application neither suggests nor explains why a soft pad is required as opposed to a fabric strip, as was explained above in the General Remarks section of this Response. Vinci also explains that the primary function of his invention is "support of the arm" and again offers as one possible fabric which could be used is Tyvek (a Dupont trade name) (Vinci, Column 5, lines 35-37). Quite clearly, Tyvek would neither function to be a soft pad, which provides the cushioning effect as required in the current application.

Because the Vinci reference does not show or disclose a soft cushion pad as required and claimed in the current application, it cannot be a 102 basis for rejection of the current application. Claims 7-12 claim a soft cushion pad as an essential element of the Applicant's invention. As such, the Vinci patent cannot serve as a basis to anticipate Claims 7-11 nor to render obvious Claim 12.

Claim Rejections 35 S.C. 103

Claims 1-6 were rejected under 35 U.S.C. as being unpatentable over Vinci in view of Tari U.S. Patent #4,662,366. Adding Tari to Vinci does nothing to correct the essential deficiency of Vinci and Tari in that neither require that these devices be constructed of a "soft cushion pad" as is required in the current Claims as amended. The Tari patent, as with Vinci, is primarily for use in an angioplasty procedure and is designed to position a patient's arm during this procedure but not to cushion the patient's arm against outside forces like operating room personnel, as was argued and explained in the General Remarks section above.

The Examiner concludes that it would have been obvious to one of ordinary skill in the art to modify Vinci '121 by adding the rights and left arm sections, including upper and lower sections as taught by Tari '366. The Examiner concludes that: "The motivation would have been to provide support for the entire right and left arms respectively." Assuming this conclusion of the Examiner is correct, it still does nothing to remedy the essential deficiencies of both the Tari and Vinci patents, neither of which describe a need to provide cushioning for patient's arms against outside pressure or forces, such as operating room personnel, stretcher belts or straps, and such other potential outside forces as described in the Applicant's Application and as was outlined in the General Remarks section of this Response. The Examiner is correct in concluding that both the Tari and the Vinci patents are directed solely toward positioning and supporting arms of a patient during a particular procedure such as angioplasty. Neither the Vinci nor the Tari reference suggest a need for cushioning of the patient's arms against outside forces and neither provide any structure in their devices which can accomplish this purpose. Consequently, there is nothing that suggests combining the Vinci and Tari references to provide a soft cushion pad for a patient's arms as is now claimed

by the Applicant. Consequently, Claims 1-4 cannot be rendered obvious by the combination of the Vinci and Tari patents.

Regarding Claims 5 and 6, the Applicant requires a generally H-shaped pad having a width approximately the length of a patient's torso. The Examiner speculates that a generally H-shaped pad the width of a patient's torso is "... inherent to the device shown by Vinci '121 as modified by Tari '366." The Applicant traverses this conclusion of the Examiner. The Applicant's cushion pad folds around and largely encloses a patient's arm from just below the shoulder all the way to the wrist. This provides the cushioning protection for the patient's arm across the full length of the arm, which could be subject to pressure from an operating room surgeon or nurse leaning over the patient. Both the Vinci and Tari patents actually teach away from this full length cushioning effect. The purpose of these references is solely to hold the arm in place and in a position suitable during an angioplasty procedure. A pad having the width of a patient's torso is neither shown nor is it even desirable for the functions performed by the Vinci and Tari patents. Insofar as the Vinci and Tari patents teach anything, they teach away from a generally H-shaped pad with a width approximately the length of a patient's torso, as is required in Claims 5 and 6 of this Application. Consequently, the Applicant traverses the conclusion of the Examiner that this is "inherent" in these prior art references.

Regarding Claim 12, the Examiner concludes that: "The motivation would have been to support each arm of the patient equally with each arm section." Again, this conclusion of the Examiner ignores the protective function of the Applicant's design. Because neither the Vinci nor Tari patents offer any protective function against outside forces, such as pressure from operating room personnel, it cannot provide motivation to provide forearm sections attached to said central cushion pad, each section sized to fit around approximately one-half of the patient's arm. In Claim 12 of the Applicant's invention, both the left and right arm are essentially enclosed within the cushioning pad, providing protection to both arms across their entire length. There is nothing in either the Tari nor Vinci patents that suggest the need to provide such protection since a much smaller strap (the Tari patent) or fabric strip (the Vinci patent) are sufficient to provide the support and positioning functions for which these inventions are solely designed .

Conclusion

The Applicant has responded to the request of the Examiner to amend the Abstract. The Applicant has responded to the Examiner's objection to a typographical error in Claim 1 by amending the claim to correct that typographical error. The Applicant has responded to Claim Rejections under both 35 U.S.C. 102 and 35 U.S.C. 103 by appropriate arguments and claims amendments. Therefore, it is believed that all claims are now in a condition for allowance and the same is respectfully requested.

This the 29 day of Sept., 2004.

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CERTIFICATE OF SERVICE

I, Michael E. Mauney, do hereby certify that a copy of the foregoing Response to Office Action in:

In Re Application: Frank Forrest Humbles

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For: SURGICAL ARM POSITIONING PAD

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has this day been duly served upon:

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This the 29 day of Sept., 2004.

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